Supreme Court, U.S.
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NO. _____

# In the
# Supreme Court of the United States

XIANGYUAN (SUE) ZHU,
*Petitioner*,

v.

MARC E. BUNTING, *et al.*,
*Respondents*.

**ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF KANSAS**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

I. Is the opinion of Kansas Court of Appeals, as upheld by Kansas Supreme Court, in violation of 42 U.S.C. § 2000a?

II. Is the opinion of Kansas Court of Appeals in the case at Bar in violation of 42 U.S.C. §§ 3604, 3606, and
§ 3617?

III. Is the opinion of Kansas Court of Appeals in the case at Bar in conflict with this Court's opinion in *Gayle v. Browder,* 352 U.S. 903, 77 S.Ct. 145 (Mem) (1956)?

IV. Is the opinion of Kansas Court of Appeals in the case at Bar in conflict with this Court's opinion in *Hamm v. City of Rock Hill,* 379 U.S. 306, 85 S.Ct. 384 (1964)?

V. Is the opinion of Kansas Court of Appeals in the case at Bar in conflict with this Court's opinion in *Torres v. Oakland Scavenger Co.,* 487 U.S. 312, 108 S.Ct. 2405 (1988)?

## PARTIES TO THE PROCEEDGINS

Xiangyuan (Sue) Zhu, a first time homebuyer and first time homeowner. At pertinent time, Ms. Zhu was a single mother working full time at Federal Home Loan Bank of Topeka ("FHLB") and raising her child alone. Ms. Zhu's occupation was senior risk analyst, and she is not an attorney – Petitioner
represented by:

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Marc E. Bunting, a white male of real estate sale person, Marc E. Bunting's family [*sic*] his parents, not living with him, and
Bunting Appraisal Services and Countrywide Realty, Inc. whose business includes engaging in residential real estate-related brokerage services and transactions, as that term of "Residential real estate-related transaction" is defined in 42 U.S.C. §3605(b)(2) - Respondents
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Thomas G. Lemon and Fisher, Cavanaugh, Smith & Lemon, P.A., Attorneys and the law firm, – Respondents
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Petitioner, Xiangyuan (Sue) Zhu, hereby petition for Writ of Certiorari to review the opinion of Kansas Court of Appeals, (entered January 11, 2002), affirming Kansas Third District Court's decisions sustaining Marc E. Bunting's petition for permanent restraining order and denying Petitioner's compulsory counterclaims, as upheld by Kansas Supreme Court (Petition for Review as a Matter of Right as authorized by K.S.A. 60-2101(b) denied April 30, 2002), alleging violations of

i) her right to be secure in her person and dwelling house under the U.S. Constitution's amend. IV;

ii) her right to be free at any establishment or place under the U.S. statute of public accommodation;

iii) her right granted or protected under the Federal Fair Housing Law, 42 U.S.C. sections 3604, 3605, 3606, and 3617; and

iv) her privileges or immunities were abridged without due process of law, and she was denied the equal protection of the laws under the U.S. Constitution's amend. XIV.

## OPINION BELOW

The opinion of Kansas Court of Appeals filed January 11, 2002, affirming Kansas Third District Court's decisions sustaining Bunting's petition for permanent restraining order and denying Petitioner's counterclaims are:

Ex parte Xiangyuan (Sue) Zhu, No. 01-87144-A

This opinion was unpublished. A copy of this opinion may be found in Appendix A of this petition. The order of Kansas Supreme Court denying review, dated April 30, 2002, may be found in Appendix J of this Petition.

The previous order of Kansas Court of Appeals in this case, dated January 31, 2001, was published and may be found in Appendix B of this Petition.

The previous opinion of Kansas Court of Appeals in this case, filed March 9, 2001, was unpublished and may be found in Appendix C of this Petition.

The order of Kansas Third District Court in this case, dated April 2, 2001, may be found in Appendix D of this Petition.

The journal entry of Kansas Third District Court in this case, filed April 2, 2001, may be found in Appendix E of this Petition.

The previous order of Kansas Third District Court in this case, filed August 1, 2000, may be found in Appendix F of this Petition.

The previous memorandum opinion and entry of judgment of Kansas Third District Court in this case, filed August 1, 2000, may be found in Appendix G of this Petition.

The decision of Kansas Third District Court in this case, dated July 13, 2000, may be found in Appendix H of this Petition.

U.S. Department of Housing and Urban Development, Housing Discrimination Complaint, Zhu v. Countrywide Realty, Inc., *et al.*, HUD Case No. 07 - 00 – 0302-8, dated April 28, 2000, may be found in Appendix I of this Petition.

## STATEMENET OF JURISDICTION

Kansas Court of Appeals affirmed Kansas Third District Court's decisions sustaining Bunting's petition for permanent restraining order and denying Petitioner's compulsory counterclaims, as that term of "compulsory counterclaims" is defined in K.S.A. 60-213(a) on January 11, 2002. Petitioner filed a Petition for Review as a Matter of Right as authorized by K.S.A. 60-2101(b) with Kansas Supreme Court and this Petition was denied April 30, 2002.

The Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257, and 42 U.S.C. § 2000a-5(b).

## STATUTORY CLAUSES INVOLVED

42 U.S.C. § 2000a –1, Prohibition against discrimination or segregation clause:

"... All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, ..., or national origin, if such discrimination or segregation is or purports to be required by any law, ..., or order of a State ..."

42 U.S.C. § 2000a –5(b):

"... It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

42 U.S.C. §§ 3604 and 3606:

"After December 31, 1968, it shall be unlawful to deny any person access to ... any real estate brokers' organization or other service, ..., or facility relating to the business of selling ... dwellings, or to discriminate against him in the terms or conditions of such access ..., on account of race, color, ..., sex, ..., or national origin..."

42 U.S.C. § 3617:

"It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised ..., any right granted or

protected by section ...3604, 3605, or 3606 of this title."

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, amend. IV, Security provision:

"The right of the people to be secure in their persons, houses, ..., shall not be violated ..."

United States Constitution, amend. XIV:

"... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

This is an appeal from the opinion of Kansas Court of Appeals which affirmed Kansas Third District Court's decisions sustaining Bunting's petition for permanent restraining order and denying Petitioner's compulsory counterclaims.

On April 28, 2000, Petitioner's complaint, alleging one or more discriminatory practices, was officially filed with U.S. Department of Housing and

Urban Development (HUD) "as a complaint under the Federal Fair Housing Law, 42 U.S.C. Section 3601 – 3619". The allegations included but not limited to, 1) exchanging repairs for sexual favors; and 2) sexual assault and rape in her dwelling house by Marc E. Bunting. (see Appendix I of this Petition).

On May 12, 2000, just two weeks after Petitioner filed the HUD complaint, Thomas G. Lemon and Fisher, Cavanaugh, Smith & Lemon, P.A. represented "Marc Bunting, Bunting Appraisal Services" sent certified letter to Petitioner at her dwelling house accusing that she had "engaged in a two year practice of stalking, criminal trespass and telephone harassment against" Bunting and his businesses, and it threatened criminal proceedings.

On May 19, 2000, Bunting, by and through Thomas G. Lemon and Fisher, Cavanaugh and Lemon P.A., filed his petition for permanent restraining order in state court in Shawnee County, Kansas, and summons was served upon Petitioner at her dwelling house. She was charged with "unlawful and harassing treatment of" Bunting "and this home, his business and in public since July 1998" of eight (8) counts.

Subsequently, Petitioner filed her compulsory counterclaims against Bunting, and Thomas G. Lemon and Fisher, Cavanaugh and Lemon P.A., and citing Federal Fair Housing Law. Her compulsory counterclaims were consolidated to Bunting's action "under applicable local rules" of Kansas Third District Court. (see Decision of Kansas Third District Court dated July 13, 2000).

HUD officer informed Petitioner that they could not finish their investigation because they had to wait decisions from Kansas Third District Court regarding Bunting's lawsuit in this case at bar against Petitioner.

In order to protect her minor child, Petitioner commenced an action in federal court to redress discrimination in housing based on sex and violations of her constitutional rights on June 29, 2000 having case No. 00-2290-KHV in that action.

The U.S. District Court citing *Ward v. Wal_mart Stores, Inc.*, 140 F. Supp.2d 1220, 1230-31 (D.N.M. 2001) found the fact Bunting filed his petition for a restraining order roughly three weeks after Petitioner filed her HUD complaint raises an inference of retaliatory motive. (see Memorandum and Order entered August 13, 2001 in No. 00-2290-KHV, p. 25).

On July 24, 2000, Petitioner filed amended motion to dismiss in Kansas Third District Court, asserting that she had never been on the premises of Bunting's residence, she had never contacted Bunting Appraisal Services, and she had contacted Countrywide Realty, Inc. regarding repairs needed to be done at her dwelling house before July 2, 1999, and citing her right granted or protected under the Federal Fair Housing Law, 42 U.S.C. sections 3604, 3605, 3606, and 3617.

On August 1, 2000, Kansas Third District Court denied Petitioner's amended motion to dismiss for

failure to state a claim, (see Kansas Third District Court's order, "The court, having review the pleadings, finds that the facts as alleged, if true, would support an order for injunctive relief, to writ: the allegations in paragraphs 5-12 of plaintiff's [sic] Bunting's petition. The fact the defendant [sic] Petitioner denies the truth of the matters asserted is not relevant at this in juncture of the inquiry. Accordingly, the defendant's [sic] Petitioner's amended motion to dismiss for failure to state a claim is denied.")

On August 1, 2000, Kansas Third District Court dismissed Petitioner's compulsory counterclaims against Thomas G. Lemon and Fisher, Cavanaugh and Lemon P.A. citing *Wichita Wire, Inc. v. Lennox,* 11 Kan. App. 2d 459 (1986), (see Kansas Third District Court's memorandum opinion and entry of judgment, "... From the facts alleged there is no basis to believe Plaintiff [sic] Petitioner could prevail on the merits, no showing of irreparable injury to her, no showing that any assumed injury to her overrides the potential injury to the rights of others ..., judgment is hereby entered ... dismissing Plaintiff's [sic] Petitioner's case for failure to state a claim."). Kansas Court of Appeals affirmed that decision on March 9, 2001. (see Kansas Court of Appeals memorandum opinion filed on March 9, 2001.)

On November 1st, 2000, Petitioner appeared in person as the *Pro Se* defendant in state court in Shawnee County, Kansas for bench trial scheduled on that day. At end of the trial, the trial court judge announced from the bench that "[I] want to ...give an oral decision rather than a written one." (see

transcript of court trial on November 1st, 2000, p. 174).

On November 3rd, 2000, the state trial court judge gave his oral decisions from the bench, granting Bunting's petition for permanent restraining order and denied Petitioner's compulsory counterclaims against Bunting. (see proceedings on the 3rd day of November, 2000, "THE COURT: ...particularly the calling of his parents, ..., nevertheless can't be justified in law because there's no greater right than right of privacy in your home and in your person," and citing the U.S. Constitution, amends, IV.)

On January 31, 2001, Kansas Court of Appeals dismissed Petitioner's appeal as interlocutory citing *In re Marrige of Wilson*, 245 Kan. 178, 180-81, 777 P.2d 773 (1989), (see Kansas Court of Appeals order dated January 31, 2001, "The appellant identifies in her notice of appeal the judgment of November 1 and November 3, 2000. There is no judgment entered on either date.").

The U.S. magistrate-mediator found that the evidence before the court does not indicate the extent to which Bunting's allegations against Petitioner were true. (see the U.S. District Court's Report and Recommendation dated November 8, 2001 in No. -2290-KHV, pp. 19-20)[1].

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1 On August 13, 2001, about twenty (20) days before then-scheduled trial date in that case, Petitioner attended mandatory mediation conference in that case. Thereafter, on

On November 8, 2001, the U.S. magistrate-mediator recommended that [U.S. district] Judge Vratil deny Petitioner's motion to reopen that action, and enter an order requiring the parties to execute the attached settlement documents, those were written by Bunting's counsel Thomas G. Lemon and had not communicated to Petitioner by Lemon, no later than November 30, 2001, and dismissing that case with prejudice if Petitioner fails to do so. (see Report and Recommendation dated November 8, 2001 in No. 00-2290-KHV, p. 2). Petitioner timely filed her affidavit objections.

On February 26, 2002, the U.S. district court denied Petitioner's second motion for reconsideration and ordered **that case has been dismissed with prejudice**, because Petitioner did not execute those settlement documents to waive her and her minor child's rights "[u]nder federal, state, county or local constitution, law, regulation, ordinance or common law that in any way relate to any claims alleged by Zhu to-wit: A. Title VII of the Civil Rights Act of 1964, as amended, 42§ 2000e, et seq.; The American With Disability Act, as amended, 42 U.S.C. § 12101, et seq." Petitioner's appeal is pending in United State Court of Appeals for the Tenth Circuit (see NO. 02 –3087).

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August 16, 2001, the U.S. District Court administratively terminated that action without prejudice.

On November 20, 2000, Petitioner timely filed her objection to Bunting's journal entry with Kansas Third District Court that, ...the order is not based on the principle that an independent, fair and competent judiciary will interpret and apply the laws govern both Mr. Bunting requested relief for a permanent injunction and Ms. Zhu's counterclaims against Bunting, and the order was contrary to the evidence adduced in the trial of this case..., and citing the equal protection clause, stating the order is a violation of the U.S. Constitution's amend. XIV.

On April 2, 2001, without a hearing required by Kansas Supreme Court Rule 170(a), the state trial court judge overruled Petitioner's objection to the journal entry, (see Kansas Third District Court's order, "The court finds Ms. Zhu's objections do not go materially to the form and accuracy of the journal entry submitted, but principally rather to challenges to the substance of the court's rulings in the above-captioned cases. Otherwise, any suggested addition or subtraction from the journal entry's findings are inappropriate to the judgment entered.")

On April 2, 2001, Kansas Third District Court filed Bunting's journal entry sustained Bunting's petition for permanent restraining order and denied Petitioner's compulsory counterclaim against Bunting. Petitioner was permanently restrained by Kansas Third District Court from:

i) being on the premises of Bunting's house, (during the trial, Bunting testified that Petitioner had never been on the premises of his house);

ii) being on the premises of Bunting Appraisal Services, (during the trial, Bunting testified that Petitioner had never contacted Bunting Appraisal Services);

iii) being on the premises of Countrywide Realty, Inc., (the records now stand, Countrywide Realty, Inc. had filed no document with the state courts asking a restraining order against Petitioner);

iv) having any contact with Bunting or his family [sic] his parents, (the records now stand, Bunting's parents have filed no document with the state courts asking a restraining order against Petitioner);

v) being within 500 feet of Bunting wherever he may be found; and

vi) sending any communication via phone, voice mail, e-mail, first class mail or otherwise to Bunting or his family [sic] his parents. (see Kansas Third District Court's journal entry filed April 2, 2001).

Petitioner appealed those decisions against her alleging that Bunting had failed to prove his case, and there are federal constitutional and statutory considerations that apply to this case, and those require Kansas Court of Appeals reverse Kansas Third District Court's rulings, citing 42 U.S.C. § 3617, the public accommodation clause, the equal protection clause of the Constitution's amends, XIV, and cited the U.S. District Court's finding (see Brief of Appellant filed June 26, 2001 in Kansas Court of Appeals.):

"... Due to her national origin, race and sex, plaintiff is a member of a protected class under the FHA. Plaintiff contends that the rights at issue are her right to possess and enjoy her home and her right to repair under her contract with defendants.

According to the amended complaint, defendants intentionally discriminated against plaintiff based on national origin, race and sex. Plaintiff argues that defendants intimidated or interfered with her rights in violation of Section 3617 in several respects:

(1) defendants retained keys to her residence and Bunting went into her home without permission to force plaintiff to have sex with him, thus interfering with plaintiff's right to enjoy her property; ...

(4) Bunting sexually assaulted her to deter her from exercising her right to enforce the terms and conditions of her housing agreement.

Under the liberal standard of a motion to dismiss, the Court finds that plaintiff has stated a claim under Section 3617. See Grieger v. Sheets, 689 F. Supp. 835, 840-841 (N.D. Ill.1988) See the Court's Order of May 29, 2001 Doc.#148 at 33 –34, *Zhu v. Countrywide Realty Company, Inc., et al.* Case No. 00-2290-KHV."

On January 11, 2002, Kansas Court of Appeals affirmed Kansas Third District Court's decisions. (see memorandum opinion of Kansas Court of Appeals file January 11, 2002):

> "...Zhu's petition alleged, in essence, that Bunting had unlawfully engaged in housing discrimination and sexual harassment that let to her filing a federal complaint against him in April 2000. She also alleged that Bunting had filed this action to retaliate. Zhu claimed she suffered emotional, physical and monetary damages from Bunting's conduct...
>
> The district court held that Zhu's claims were based on past harm ...
>
> Interpretation of a statute is a question of law, and appellate review is unlimited ...
>
> In *Sample v. Balbernie*, 20 Kan. App. 2d 527, 529-30, 889 P.2d 804 (1995), this court determined injunctive relief under K.S.A. 60-901 *et seq.*, was available to protect an individual from harassment, assault, and threat by another when the parties have not lived together or been married...
>
> Zhu also makes several arguments regarding the breadth of the restraining orders. An injunction is an equitable remedy governed by the principles of equity. *Wichita Wire, Inc. v.*

*Lenox*, 11 Kan. App. 2d 459, 61, 726 P.2d 287 (1986). The district court has discretion in deciding to grant or deny an injunction and its decision will not be disturbed on appeal …

Zhu … argues she should not be restrained from contacting his parents because they were not parties to the action and were not entitled to any relief. The restraining order does not grant relief to Bunting's parents… In other words, Zhu was prohibited from calling Bunting's parents …This was appropriate under the facts …

Next, Zhu claims the restraining order should be exclude Bunting's residence and his appraisal business because there was no evidence that she contacted Bunting at his residence or appraisal business. She also believes the district court should not have retrained her from being within 500 feet of Bunting wherever he may be. She argues this order denies her the right of equal access to public property. Again, Zhu misses the purpose of the restraining order...

Zhu also contends the restraining order should not prohibit her from being within 500 feet of Bunting in public places. Such restraint, she claims, interferes with her daily living and raising her child. The restraining order does not prohibit Zhu from accessing public places or property. It only limits the proximity she must maintain from Bunting if he is at the same

public property. It is not a prohibition against Zhu accessing public property…

Zhu next claims the district court was prejudiced against her. First, she claims an improper ex parte communication between the court and Bunting's attorney "calls into question the integrity of the entire judicial process" and "unfairly prejudiced the case."…

Ex parte communication by a judge are prohibited …
Zhu does not indicate how Bunting gained a procedural or advantage as a result of the letter. The communication was proper…

Zhu next argues the district court erred by not conducting a hearing prior to signing and filing the journal entry submitted by Bunting and by denying her objection thereto …

If counsel cannot agree as to the form of the journal entry, the judge shall settle the journal entry after hearing." Supreme Court Rule 170(a). Zhu's objections were not to the form or accuracy of the court's rulings in the journal entry. Thus, no hearing was required. Further Zhu did not request, and thus waived, a hearing …

Next, Zhu states:"[T]he trial court granted [Bunting's attorney's] subpoena of Greg Lee, an attorney, and it is an invasion of [Zhu's]

client/lawyer privilege." Zhu also argues the district court violated her private detective's privilege under common law when it announced its rulings from the bench. She does not discuss any facts, arguments, or authority for either point. When a point is incidentally raised but not intelligibly argued, it is deemed abandoned...

Last, Zhu argues the certified shorthand reporter changed the transcripts ... She does not give the substance of any alleged errors ...The other 10-page motion listed 43 proposed changes to the transcript of the district court's decision. The third 74-page motion listed 308 proposed changes to the transcript of the trial ... Zhu does not provide any argument or authority to show how she was prejudiced. Her brief does not comply with Supreme Court Rule 6.02(d) and (e) (2001 Kan. Ct. R. Annnot. 35). Because of these failures, the issue is deemed abandoned ...

In sum, a review of the entirety of the record on appeal shows no prejudice towards Zhu by the district court. The court's findings of fact and conclusions of law were correct, and the restraining orders were not overly broad." (see memorandum opinion of Kansas Court of Appeals filed January 11, 2002).

Petitioner filed Petition for Review as a Matter of Right with Kansas Supreme Court on February 11, 2002 arguing in a Ground for Review that,

i) As the consumer of the first time homebuyer and homeowner, Petitioner owned no duty to the real estate salesperson rapist Bunting in her house. However, as the real estate salesperson, Bunting had a duty to disclose when he made the fraudulent misrepresentations to Petitioner in selling her the house, and Bunting was required to conduct himself in a particular manner not threat, harass, and rape Petitioner in her house;

ii) *Sampel* was a very different case. To the contrary, the issues raised in that case were very different from those raised here. In *Sampel*, the mother of minor child filed a petition seeking a temporary restraining order and injunctive relief to restrain man claiming to be child's father from assaulting, harassing and threatening her. In her petition, Sampel requested that Balbernie be restrained and enjoined from continuing to harass or abuse her. She alleged Balbernie had "trespassed onto [her] property, forcibly entered her residence and assaulted and battered her." She also alleged she was unable to obtain adequate protection from the police because she did not have a restraining order.

To the contrary of *Sampel,* Bunting was the real estate salesperson and the attacker in Zhu's house. Bunting filed a petition seeking a permanent restraining order against Zhu, and Zhu was the consumer homeowner and the rape victim in her own home. Bunting stipulated during the cross-examination that Zhu had never been in his residence, in addition Bunting was an armed and experienced hunter. He had never alleged he was unable to obtain adequate protection from the police;

iii) under *Sample*, Kansas Court of Appeals held, "However, our reversal of the dismissal of Sampel's action is required only if the petition alleged facts that, if proven, would entitle her to injunctive relief."

In this case at bar, because Bunting had failed to prove each alleged 8 counts against Zhu, that requires reversal of the granting his petition for permanent restraining order;

iv) in order to circumvent Bunting's burden of proof, the appellate judges misdirected their endeavors to act as prosecutors, medical doctors, and fortunetellers against Zhu;

v) considering all of the evidence, the judges' finding is such as to "shock the conscience," or it is "clearly feigned";

vi) Kansas Court of Appeals opinion was a) "discrimination or segregation in places of public accommodation", and citing 42 U.S.C.A. § 2000a; b) violation of 42 U.S.C. §§ 3604, 3606 and 3617 and consumer protection law; and c) conflict with the Supreme Court's opinion in *Bowers v. Hardwick,* 478 U.S. 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), and citing constitutional protections of Fourth Amendment. (see Petition of Petitioner filed with Kansas Supreme Court on February 11, 2002); and

vii) the need for exercising Kansas Supreme Court's supervisory authority. (see Petition of Petitioner filed February 11, 2002, and Petitioner's Reply filed March 1, 2002 in Kansas Supreme Court.)

Kansas Supreme Court denied this Petition on April 30, 2002. (see order of Kansas Supreme Court Dated April 30, 2002.)

## REASONS FOR GRANTING THE WRIT

As stated above, as the consumer of the first time homebuyer and homeowner, Petitioner owned no duty to the real estate salesperson rapist Bunting in her house. However, as the real estate salesperson, Bunting had a duty to disclose when he made the fraudulent misrepresentations to Petitioner in selling her the house, and Bunting was required to conduct himself in a particular manner not threat, harass, and rape Petitioner in her house.

If Kansas Court of Appeals opinion stands, it is destructive to the rape victim's security in her dwelling house, and opens floodgate for using malicious lawsuits to retaliate victims for their lawfully protected activities of filling anti-discrimination complaints with governmental agencies.

### Question for Review I

Is the opinion of Kansas Court of Appeals, as upheld by Kansas Supreme Court, in violation of 42 U.S.C. § 2000a?

### Reasons for Granting the Writ

Petitioner was restrained from being within 500 feet of where Bunting was. Because the domain of

within the 500 feet was at any establishment or place, Kansas Court of Appeals opinion was governed exclusively by 42 U.S.C. § 2000a. As stated above 42 U.S.C. § 2000a –1 is prohibition against discrimination or segregation required by any law, …, or order of a state … at any establishment or place.

"It is the statute, (not Kansas Court of Appeals review of unlimited interpretation) *** which is the authoritative expression of law." *City of Chicago* v. *Environmental Defense Fund*, 511 U.S. 328, 337 S.Ct. (1994). Here, the statute—which is unambiguous—imposes prohibition against discrimination or segregation required by Kansas Court of Appeals opinion against Petitioner in this case.

Petitioner submit that Kansas Court of Appeals opinion in the case at bar is in direct violation of 42 U.S.C. § 2000a. Because Petitioner's rights to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, or national origin under the U.S. statutes were violated, and such discrimination or segregation was or purported to be required by this erroneous interpretation of Kansas Court of Appeals, this Petition should be granted.

**Question for Review II**

Is the opinion of Kansas Court of Appeals in the case at Bar in violation of 42 U.S.C. §§ 3604, 3606, and § 3617?

**Reasons for Granting the Writ**

Petitioner was restrained from being on the premises of Bunting Appraisal Services and Countrywide Realty, Inc. Because their business included engaging in residential real estate-related brokerage services and transactions, as that term of "residential real estate-related transaction" was defined in 42 U.S.C. §3605(b)(2), Kansas Court of Appeals opinion was governed exclusively by 42 U.S.C. § 3617.

"It is the statute, (not Kansas Court of Appeals review of unlimited interpretation) *** which is the authoritative expression of law." *City of Chicago* v. *Environmental Defense Fund*, 511 U.S. 328, 337 S.Ct. (1994). Here, the statute stated above —which is unambiguous—imposes prohibition against interference by Kansas Court of Appeals opinion against Petitioner in this case ... on account of race, color, sex, or national origin and on account of her having exercised any right granted or protected by section 3604, 3605, or 3606 of title 42.

Petitioner submit that Kansas Court of Appeals opinion in the case at bar is in direct violation of 42 U.S.C. § 3617. Because Petitioner's access to the service or facility relating to the business of selling dwelling under the U.S. statutes were violated, and such violation or discrimination against her in the terms or conditions of such access, on account of race, color, sex, or national origin and on account of her having exercised any right granted or protected by section 3604, 3605, or 3606 of title 42, was or purported to be required

by this erroneous interpretation of Kansas Court of Appeals, this Petition should be granted.

**Question for Review III**

Is the opinion of Kansas Court of Appeals in the case at Bar in conflict with this Court's opinion in *Gayle v. Browder,* 352 U.S. 903, 77 S.Ct. 145 (Mem) (1956)?

**Reasons for Granting the Writ**

In *Gayle v. Browder,* (rehearing Denied Dec. 17, 1956), the Court affirmed judgment in *Browder v. Gayle,* 142 F.Supp. 707 (D.C.Ala. 1956).

That case is an action for declaratory judgment that statutes of state and ordinances of City of Montgomery, Alabama, requiring segregation of white and colored races on motor buses of the City of Montgomery and its police jurisdiction were unconstitutional and also to enjoin enforcement of such statutes and ordinances.

In that judgment, the District Court, Rives, Circuit Judge, held that statutes and ordinances requiring segregation violated due process and equal protection of law clauses of fourteenth amendment to Constitution of United States, and ordered accordingly.

In the case at bar, Petitioner's right to be secure in her house, expressly guaranteed by the Fourth

Amendment, is perhaps the most "textual" of the various constitutional provisions that inform the courts' understanding of the right to privacy. *Bowers v. Hardwick* 478 U.S. 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986). Petitioner's rights have been violated because Bunting had subjected her to his sexual exploitation and sexually assaulted her in her dwelling house. As of today, Bunting has still kept harassing her through Lemon and the law firm in her residence.

In it's opinion on this case, Kansas Court of Appeals affirmed Kansas Third District Court's decisions sustaining Bunting's petition for permanent restraining order and denying Petitioner's counterclaims.

Petitioner submit that Kansas Court of Appeals opinion in the case at bar are in direct conflict with *Gayle v. Browder*. Because Petitioner's rights to be free, at any establishment or place, from discrimination or segregation, and her access to the service or facility relating to the business of selling dwelling, in addition, her rights of privacy and to be secure in her dwelling house under the U.S. Constitution, amend. IV, and her request for equality of treatment before the law for her without regard to race or color under the U.S. Constitution, amend. XIV were violated by this erroneous interpretation of Kansas Court of Appeals, this Petition should be granted.

**Question for Review IV**

Is the opinion of Kansas Court of Appeals in the case at Bar in conflict with this Court's opinion in

*Hamm v. City of Rock Hill,* 379 U.S. 306, 85 S.Ct. 384 (1964)?

**Reasons for Granting the Writ**

In *Hamm v. City of Rock Hill,* the Court found 'Sit in' cases wherein state courts of last resort affirmed convictions based on state trespass statutes against Negro petitioners for participating in 'sit in' demonstrations in luncheon facilities of retail stores.

In one case, the Circuit Court, Pulaski County, Arkansas, rendered judgment and the Supreme Court of Arkansas, 236 Ark. 596, 367 S.W.2d 750, affirmed.

In the other case, the City Court of Rock Hill, South Carolina, rendered judgments of convictions. The General Sessions Court of York County, South Carolina, affirmed, and the Supreme Court of South Carolina, 241 S.C. 420, 128 S.E.2d 907, affirmed.

This Court granted Certiorari in each case. This Court, Mr. Justice Clerk, held that the convictions were required to be vacated and the prosecutions dismissed, that the Civil Rights Act of 1964 forbids discrimination in places of public accommodation… this Court vacated those judgments and ordered those charges be dismissed.

In it's opinion on this case, Kansas Court of Appeals affirmed Kansas Third District Court's ruling that Petitioner was permanently restrained from being on the premises of Bunting Appraisal Services and

Countrywide Realty, Inc., and from being within 500 feet of Bunting wherever he may be found after near forty (40) years of the Civil Rights Act of 1964 forbids discrimination in places of public accommodation.

Based on the direct conflict between Kansas Court of Appeals and the Supreme Court of the United States over the application of the Civil Rights Act of 1964, this Petition should be granted.

**Question for Review V**

Is the opinion of Kansas Court of Appeals in the case at Bar in conflict with this Court's opinion in *Torres v. Oakland Scavenger Co.,* 487 U.S. 312, 108 S.Ct. 2405 (1988)?

**Reasons for Granting the Writ**

It is well settled in the U.S. jurisdictions, that parties not named as plaintiffs are not entitled for any relief. In *Torres v. Oakland Scavenger Co.,* the Court held that,

> "(1) court of appeals could not waive jurisdictional requirement of naming parties to appeal, even for good cause shown, and (2) court of appeals did not have jurisdiction over appeal of litigant who was not specified in notice of appeal ..."

Supreme Court Rule 12 No. 6 states "... Parties who file no document will not qualify for any relief from this Court."

Petitioner submit that Kansas Court of Appeals opinion in the case at bar are in direct conflict with *Torres v. Oakland Scavenger Co.*, because Bunting's family [sic] his parents, Bunting Appraisal Services and Countrywide Realty, Inc. were not named as plaintiffs in the caption of Bunting's petition for permanent restraining order, that petition was insufficient to notify this Petitioner and the state courts that Bunting's family [sic] his parents, Bunting Appraisal Services and Countrywide Realty, Inc. were plaintiffs or to allow Petitioner and the courts to determine with certitude whether Bunting's family [sic] his parents, Bunting Appraisal Services and Countrywide Realty, Inc. should be bound by an adverse judgment or held liable for costs or sanctions.

In addition, Bunting's family [sic] his parents, Bunting Appraisal Services and Countrywide Realty, Inc. had filed no document with the state courts, and did not appear in person or through counsel at the court's bench trial on 1st and 3rd day of November, 2000. (see Journal Entry of Kansas Third District Court filed April 2, 2001, p. 1). Therefore, they were not qualifying for any relief from the state courts.

Furthermore, Bunting's petition for permanent restraining order did not ask that Petitioner should be restrained from being on the premises of Countrywide Realty, Inc. Therefore, there no base for the state courts issuing permanent restraining order that this Petitioner

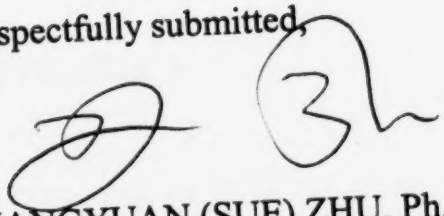
was restrained from being on the premises of Countrywide Realty, Inc.

The opinion of Kansas Court of Appeals essentially holds that parties not named in caption of Bunting's petition, who had filed no document with the court, and did not appear in person or through counsel at the court's bench trial, even without request, were qualify for relief from the court, because that opinion affirmed Kansas Third District Court's permanent restraining orders for them against this Petitioner. Clearly, that opinion did not meet the jurisdictional requirement held by this Court in Torres v. Oakland Scavenger Co., and therefore the Kansas courts are following the jurisdictional requirement in direct conflict with the Supreme Court's opinion in Torres v. Oakland Scavenger Co. Because Petitioner's privileges or immunities of citizens of the United States abridged, without due process of law, and she was denied the equal protection of the laws, under the U.S. Constitution, amend. XIV by this prejudice practice of Kansas Court of Appeals, this Petition should be granted.

## CONCLUSION

BESED ON THE FOREGOING ARGUMENTS, Petitioner prays that this Petition for an Extraordinary Writ of Certiorari be granted.

Respectfully submitted,



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*Petitioner*

## APPENDIX A

NOT DESIGNATED FOR PUBLICATION

**No. 01-87144-A**

**IN THE COURT OF APPEALS OF THE STATE OF KANSAS**

**[Filed January 11, 2002]**

EX PART XIANGYUAN (SUE) ZHU,
*Appellant*

## MEMORANDUM OPINION

Appeal from Shawnee District Court; FRANKLIN R. THEIS, JUDGE, opinion filed January 11, 2002. Affirmed.

*Xiangyuan (Sue) Zhu*, appellant pro se.

*Thomas G. Lemon and Todd D. Powell*, of Fisher, Cavanaugh, Smith & Lemon, P.A., of Topeka, for Appellee.

Before BEIER, P.J., PIERRON, J., AND WAHL, S.J.

*Per Curiam*: Marc Bunting filed a petition for a permanent restraining order against Xiangyuan (Sue) Zhu, pursuant to K.S.A. 60-901, Zhu filed an answer denying all of Bunting's allegations. She then filed a petition for a permanent restraining order against Bunting pursuant to K.S.A. 60-901. Bunting filed answer denying Zhu's allegations. The cases were consolidated.

The district court made very extensive findings of fact and conclusions of law. Based on the evidence before it, the court was completely justified in finding that Zhu had engaged in longstanding and extensive harassing behavior, in addition to her filing of complaints against Bunting with a number of government agencies.

The district court found that Zhu had not sustained her burden of proof to establish that she was the victim of inappropriate behavior by Bunting and denied her petition for a restraining order against Bunting. The court found that Zhu's conduct would continue if not restrained and granted Bunting a restraining order against Zhu. She appeals.

Our standard of review is clear and we have no reason to question the factual findings made by the district court in support of its ruling as to sufficiency and appropriateness. We deny any appeal on that basis.

Zhu argues that injunctive relief under K.S.A. 60-901 applies only to labor disputes. Her position on appeal is rather interesting considering she filed her petition for injunctive relief against Bunting based upon the same statute.

Interpretation of a statute is a question of law, and appellate review is unlimited. *Babe Houser Motor Co. v. Tetreault*, 270 Kan. 502, 506, 14 P.3d 1149 (2000). An injunction is "an order to do or refrain from doing a particular act" and may be a provisional remedy or a final judgment. K.S.A. 60-901. Clearly, the statute does not limit its application to only labor disputes. The only reference to labor dispute is in K.S.A. 60-904. That statute makes specific requirement for injunctive relief involving labor disputes. By the clear language of K.S.A. 60-901, Zhu's argument fails.

Zhu also claims the district court erroneously held the federal complaint she had filed against Bunting were not material to its decision regarding a restraining order. She further argues the court violated the Equal Protection Clause of the Fourteenth Amendment to the United State Constitution when it denied her petition for injunctive relief against Bunting and granted injunctive relief to Bunting.

In *Sample v. Balbernie*, 20 Kan. App. 2d 527, 529-30, 889 P.2d 804 (1995), this court determined injunctive relief under K.S.A. 60-901 *et seq.*, was available to protect an individual from harassment, assault, and by another when the parties have not lived together or been married.

"To obtain injunctive relief from a prospective injury, the movant must show: (1) there is a reasonable probability of irreparable future injury to the movant; (2) an action at law will not provide an adequate remedy; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the injunction, if issued, would not be adverse to the public interest. [Citations omitted.]" 20 Kan. App. 2d at 530-31.

Zhu's petition alleged, in essence, that Bunting had unlawfully engaged in housing discrimination and sexual harassment that let to her filing a federal complaint against him in April 2000. She also alleged that Bunting had filed this action to retaliate. Zhu claimed she suffered emotional, physical and monetary damages from Bunting's conduct.

The district court held that Zhu's claims were based on past harm and were more properly addressed in the forums where she had filed her complaints against Bunting and those forums would have to determine if the evidence provided a basis for relief, and if so, what type of relief. It also found an injunction protects that status quo or prevents future harm, and the evidence did not show there was a reasonable probability that Bunting would approach Zhu in the future under any circumstances. Thus, the evidence was insufficient to justify an injunction.

Bunting requested a restraining order to protect

him from Zhu's continued harassment. The district court found Zhu continued to call and write Bunting after he requested her to cease contact in October 1999. After April 2000, the only contact she had with Bunting was through legal proceedings. From the court's observation of Zhu and the evidence, it found she was emotionally involved in restoring a business or social relationship with Bunting. Her grievances were more properly resolved in the pending legal proceedings. Further, her direct contact with Bunting would not have any beneficial effect on the legal proceedings. The court found that a restraining order was in the interest of the parties and the public. It restrained Zhu from having any persona contact or communication with Bunting except as necessary for any pending legal or administrative proceedings.

Based upon its assessment of the evidence and witnesses, the district court properly applied the factors for injunctive relief to both petitions.

Zhu also makes several arguments regarding the breadth of the restraining orders. An injunction is an equitable remedy governed by the principles of equity. Wichita Wire, Inc. v. Lenox, 11 Kan. App. 2d 459, 61, 726 P.2d 287 (1986). The district court has discretion in deciding to grant or deny an injunction and its decision will not be disturbed on appeal absent a showing of abuse of that discretion. 11 Kan. App. 2d at 462; see also State v. Martinez, 27 Kan. App. 2d 9, 12, 996 P.2d 371 (2000) (standard of appellate review is abuse of discretion in deciding whether the trial court's injunctive

relief was overly broad). The appellant has the burden of proof to show that the district court abused its discretion. 11 Kan. App. 2d at 462.

Initially, Zhu points out that Bunting's petition stated that "[d]efendant [Zhu] should be restrained from having contact with the [d]efendant." Zhu contends that Bunting alleged she should be restrained from having any contact with herself. This is a baseless argument. It was a typographical error that did not prejudice Zhu, and the district court did not restrict Zhu from contacting herself.

Zhu was restrained from being on the premises of Bunting's house and business; from being within 500 feet of where Bunting was except for litigation or dispute resolution proceedings requiring joint attendance; and from communicating by phone, voice mail, e-mail, first class mail, or otherwise with Bunting or his family.

Zhu argued the district court erred by prohibiting her form contacting Bunting's family. She claims Bunting does not have a family because he has never been married and has no children. She also argues she should not be restrained from contacting his parents because they were not parties to the action and were not entitled to any relief.

The restraining order does not grant relief to Bunting's parents. In making its decision from the bench, the district court stated it believed Zhu was trying to force her feelings onto Bunting because she felt she

had been wronged in the real estate transaction or by Bunting's treatment based upon their relationship. It stated the calls and letters, and particularly Zhu's calls to Bunting's parents, were done with the intent to influence Bunting. The court stated disputes should be addressed between the parties and note through their relatives. In other words, Zhu was prohibited from calling Bunting's parents because those calls were a subterfuge to contact Bunting. This was appropriate under the facts.

Next, Zhu claims the restraining order should be exclude Bunting's residence and his appraisal business because there was no evidence that she contacted Bunting at his residence or appraisal business. She also believes the district court should not have retrained her from being within 500 feet of Bunting wherever he may be. She argues this order denies her the right of equal access to public property. Again, Zhu misses the purpose of the restraining order.

The district court found, from its observations of Zhu during the proceedings, that she was clearly "emotionally involved in restoring what she believes was the treatment she deserved based on the relationship-business or social. Given that state of mind and that attitude," it needed to intervene to guarantee Bunting's privacy. The facts support this conclusion. When Zhu was told not to come to Bunting's office, she escalated her e-mails and telephone calls to his house. When Bunting placed a call block on his telephone, Zhu used other telephones to circumvent it. Thus, the court reasonably concluded that Zhu would continue to find new means or places to contact Bunting if only one

means or place of contact were restricted.

Zhu also contends the restraining order should not prohibit her from being within 500 feet of Bunting in public places. Such restraint, she claims, interferes with her daily living and raising her child. The restraining order does not prohibit Zhu from accessing public places or property. It only limits the proximity she must maintain from Bunting if he is at the same public property. It is not a prohibition against Zhu accessing public property.

The district court did not abuse its discretion in the breadth of the restraining order.

Zhu next claims the district court was prejudiced against her. First, she claims an improper ex parte communication between the court and Bunting's attorney "calls into question the integrity of the entire judicial process" and "unfairly prejudiced the case."

Shortly after Bunting filed petition and before Zhu filed her answer and petition against Bunting, the district court wrote a letter to Bunting's attorney. It advised that Bunting's case had been placed on the court calendar for status review on a certain date and the case would be dismissed if it was not actively prosecuted. A copy was filed in the court file the next day. The court explained to the Commission on Judicial Qualifications that he letter was a form letter and not sent to Zhu because she did not have the burden to prosecute the case. Further, the letter is usually not sent to pro se

plaintiffs because they usually lack the sophistication to understand the discussion of discovery matters.

Ex parte communication by a judge are prohibited unless they are for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. Under these exceptions, the judge must reasonably believe that a party will not gain a procedural or tactical advantages as result of the ex parte communication and must promptly notify all other parties of the substance of the ex parte communication and give them an opportunity to respond. Supreme Court Rule 601A, Canon 3(B)(7)(a) (2001 Kan. Ct. R. Annot.491). Clearly, the letter was for scheduling purposes and did not address substantive matters. Zhu does not indicate how Bunting gained a procedural or advantage as a result of the letter. The communication was proper. See *George v. Capital South Mtg. Investments, Inc.*, 265 Kan. 431, 462, 961 P.2d 32 (1998).

Zhu next argues the district court erred by not conducting a hearing prior to signing and filing the journal entry submitted by Bunting and by denying her objection thereto.

Bunting's attorney submitted a proposed journal entry pursuant to Supreme Court Rule 170 (2001 Ct. R. Annot. 205), and sent a copy to Zhu. One week later Zhu filed her objections. Her objections did not contain a request for or a notice of hearing. The "objections" averred by Zhu related to evidentiary matters at trial and the impartiality of the district court. The court denied Zhu's objections because they did not address either the

form or accuracy of the proposed journal entry, and held that a hearing was not required because the journal entry correctly reflected its rulings.

If the parties cannot agree on the journal entry, the proposed journal entry and other parties' objections are submitted "to the judge for approval." If counsel cannot agree as to the form of the journal entry, the judge shall settle the journal entry after hearing." Supreme Court Rule 170(a). Zhu's objections were not to the form or accuracy of the court's rulings in the journal entry. Thus, no hearing was required. Further Zhu did not request, and thus waived, a hearing. See *George*, 265 Kan. at 462.

Zhu next argues the district court precluded her from using business records during the trial. The record cite to which she refers is for the hearing where the district court announced its decision from the bench. After making its rulings, Zhu told the court that she had subpoenaed the telephone company's records to prove that Bunting had called her. Zhu apparently believed Bunting's counsel concealed the records from her.

The telephone company's custodian of records did not complete the affidavit regarding the business records. Instead, the custodian attached a letter stating that Zhu's subpoena had been received but the requested records were not provided because the request was "very unclear." Zhu's argument fails because she failed to submit admissible business records to the district court.

Next, Zhu states:"[T]he trial court granted [Bunting's attorney's] subpoena of Greg Lee, an

attorney, and it is an invasion of [Zhu's] client/lawyer privilege." Zhu also argues the district court violated her private detective's privilege under common law when it announced its rulings from the bench. She does not discuss any facts, arguments, or authority for either point. When a point is incidentally raised but not intelligibly argued, it is deemed abandoned. *Mid-West Painting, Inc. v. State Employment Security Bd. of Review,* 26 Kan. App. 2d 266, 270, 984 P.2d 146 (1999).

Last, Zhu argues the certified shorthand reporter changed the transcripts. She cites to the first pages in three motions she had filed requesting correction of the transcripts. She does not give the substance of any alleged errors. One motion tot eh transcript for the hearing on settlement proposals. Because Zhu does not challenge anything about settlement proposals, this issue is moot. The other 10-page motion listed 43 proposed changes to the transcript of the district court's decision. The third 74-page motion listed 308 proposed changes to the transcript of the trial. It is not clear that there actually were 308 errors in the transcript. Further, Zhu does not provide any argument or authority to show how she was prejudiced. Her brief does not comply with Supreme Court Rule 6.02(d) and (e) (2001 Kan. Ct. R. Annnot. 35). Because of these failures, the issue is deemed abandoned. See Mid-West, 26 Kan. App. 2d at 270.

In sum, a review of the entirety of the record on appeal shows no prejudice towards Zhu by the district

court. The court's findings of fact and conclusions of law were correct, and the restraining orders were not overly broad.

Affirmed.

## APPENDIX B

**No. 00-86190-A**

**IN THE COURT OF APPEALS OF THE STATE OF KANSAS**

**[Dated January 31, 2001]**

EX PART XIANGYUAN (SUE) ZHU,
*Appellant*

**ORDER**

On January 12, 2001, this court issued an order directing the parties to show cause why this appeal should not be dismissed as interlocutory. The appellant has filed a "cause of appeals" and the appellee has filed a reply. The court has considered the parties' arguments and the documents submitted in support of jurisdiction.

In order to invoke appellate jurisdiction, there must be a final decision in the action. K.S.A. 60-2102(a)(4). A final decision generally disposes of the

entire merits of the case and leaves no further questions or the possibility of future directions or actions by the court. *State ex rel. State Board of Healing Arts v. Beyrle,* 262 Kan. 507, 509, 941 P.2d 371 (1997). Judgment is entered when a journal entry or judgment form is filed. K.S.A. 60-258. A judgment is effective only when a journal entry or judgment form is signed by the judge and filed with the clerk of the district court. Trial docket minute sheets do not comply with K.S.A. 60-258. *In re Marrige of Wilson*, 245 Kan. 178, 180-81, 777 P.2d 773 (1989).

In the present case, no journal entry has been filed. In fact, the documentation the appellant provides demonstrates the journal entry is still a matter of controversy in the district court. The journal entry of January 16, 2001, regarding disqualification does not dispose of the entire merits of the case.

The appellant identifies in her notice of appeal the judgment of November 1 and November 3, 2000. There is no judgment entered on either date. A notice of appeal must specify the order(s) being appealed from. Hess v. St. Francis Regional Medical Center, 254 Kan. 715, ¶¶ 1,2, 869 P.2d 598 (1994). Should the appellant seek appellate review from an eventual final judgment, she will be obligated to file a notice of appeal properly identifying the orders subject to appeal and she will be obligated to docket a new appeal with this court.

The appeal is dismissed.

DATED: January 31, 2001

FOR THE COURT

/s/_____

G. JOSEPH PIERRON, Judge

## APPENDIX C

NOT DESIGNATED FOR PUBLICATION

**No. 00-85883-A**

**IN THE COURT OF APPEALS OF THE STATE OF KANSAS**

**[Filed March 9, 2001]**

EX PART XIANGYUAN (SUE) ZHU,
*Appellant*

## MEMORANDUM OPINION

Appeal from Shawnee District Court; FRANKLIN R. THEIS, Judge, Opinion filed March 9, 2001. Affirmed.

*Xiangyuan (Sue) Zhu*, appellant pro se.

*Stephen W. Cavanaugh and Todd D. Powell*, of Fisher, Cavanaugh, Smith & Lemon, P.A., of Topeka, for Appellee.

Before RULON, C.J., PIERRON, J., AND ROGG, S.J.

*Per Curiam*: The opinion of the trial court adequately explains the decision. Affirmed pursuant to Supreme Court Rule 7.042(d) (200 Kan. Ct. R. Annot. 49).

## APPENDIX D

**NOS. 00C579 & 00C665**

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS, DIVISION SEVEN**

**[Filed April 2, 2001]**

EX PART XIANGYUAN (SUE) ZHU,
*Defendant*

## ORDER

This matter comes on before the court on Ms. Zhu's objection to the journal entry submitted in the above-captioned cases.

The court finds Ms. Zhu's objections do not go materially to the form and accuracy of the journal entry submitted, but principally rather to challenges to the substance of the court's rulings in the above-captioned cases. Otherwise, any suggested addition or subtraction from the journal entry's findings are inappropriate to the judgment entered. Further, there being no question

existing, but that the journal entry substantively and correctly reflects the court's rulings in the above-captioned cases, no hearing is required.

However, the court, at its own instance, modifies the journal entry at paragraph 7 to reflect that the injunction entered in Case No. 00C579 would exclude from its operative parameters any circumstance where litigation or alternative dispute resolution procedures require the joint attendance of the parties.

Accordingly, and in all respects, Ms. Zhu's objection to the journal entry is overruled and judgment is entered pursuant to the journal entry attached hereto in each of the above-captioned cases.

IT IS SO ORDERED, this 2nd day of April, 2001.

/s/_____
Franklin R.Theis
Judge of the District Court
Division Seven

**APPENDIX E**

**NOS. 00C579 & 00C665**

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS, DIVISION SEVEN**

**[Filed April 2, 2001]**

| | |
|---|---|
| EX PART XIANGYUAN (SUE) ZHU, *Defendant* | ) ) ) ) |

**JOURNAL ENTRY**

Now, on this 1ST and 3RD day of November, 2000, the above entitled matters come on for hearing. Marc E. Bunting appears in person and through counsel Thomas G. Lemon of Fisher, Cavanaugh, Smith & Lemon, P.A., Xiangyuan (Sue) Zhu appears in person pro se.

After both parties present their evidence and rest, the court finds as follows:

1. That Ms. Zhu has failed to provide adequate proof to require a restraining order protecting her from Mr. Bunting.

2. Based upon a lack of evidence substantiating the need for such, Ms. Zhu's Petition for Restraining Order should be denied.

3. Ms. Zhu made excessively numerous phone calls to Mr. Bunting's home and sent him unwanted correspondence after he requested that she stop such in October of 1999.

4. In March or April 2000, Ms. Zhu made attempts to contact Mr. Bunting through his parents by contacting them on at least two occasions.

5. Ms. Zhu's behavior will not stop without court intervention through a restraining order.

6. Mr. Bunting's Petition for Restraining Order is proper and should be sustained.

7. Mr. Bunting's Motion for Sanction should be denied.

WHEREUPON, it is the Order of this court:

1. Xiangyuan (Sue) Zhu's Petition for Permanent Restraining Order denied.

2. Marc E. Bunting's Petition for Restraining Order is sustained.

3. Marc E. Bunting's Motion for Sanctions is denied.

4. That the Defendant, Xiangyuan (Sue) Zhu, should be restrained from having any contact with the Defendant or his family.

5. That the Defendant Xiangyuan (Sue) Zhu should be restrained from being on the premises of the Plaintiff's residence.

6. That the Defendant Xiangyuan (Sue) Zhu should be restrained from being on the premises of the Plaintiff's business which is Bunting Appraisal Services and Countrywide Realty, Inc., 2030 S.W. McAlister, Topeka, Kansas 66604.

7. That the Defendant Xiangyuan (Sue) Zhu should be restrained from being within 500 feet of the Plaintiff wherever he may be found, except as any litigation or alternative dispute resolution proceedings require their joint attendance.

8. That the Defendant Xiangyuan (Sue) Zhu should be restrained from sending any communication via phone, voice mail, e-mail, first class mail or otherwise to the Plaintiff or his family.

IT IS SO ORDERED.

/s/_____
Franklin R.Theis
District Court Judge

APPROVED BY:

/s/_____

Thomas G. Lemon
FISHER, CAVANAUGH, SMITH & LEMON
2942 S.W. Wanamaker Drive, Suite 100
Topeka, Kansas 66614-4135
ATTORNEY FOR MARC E. BUNTING

## APPENDIX F

**NO. 00C579**

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS, DIVISION SEVEN**

**[Dated July 31, 2000]**

EX PART XIANGYUAN (SUE) ZHU,
*Defendant*

**ORDER**

This mater come on before the court on the Defendant's, Xiangyuan (Sue) Zhu's, Amended Motion to Dismiss based her claim that the Petition for Permanent Restraining Order filed by the Plaintiff, Mark E. Bunting, fails to state a claim. No oral argument has been requested.

The court, having review the pleadings, finds that the facts as alleged, if true, would support an order for injunctive relief, to writ: the allegations in

paragraphs 5-12 of Plaintiff's Petition. The fact the Defendant denies the truth of the matters asserted is not relevant at this injuncture of the inquiry.

Accordingly, the Defendant's amended Motion to Dismiss for failure to state a claim is denied.

This matter is set for trial September 6, 2000, at 1:30 p.m. The parties are directed to exchange exhibits and witnesses' lists before August 18, 2000.

IT IS IRDERED, this 31st day of July, 2000.

/s/_____
Franklin R.Theis
Judge of the District Court
Division Seven

**APPENDIX G**

**NO. 00C714**

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS, DIVISION SEVEN**

**[Dated July 31, 2000]**

EX PART XIANGYUAN (SUE) ZHU,
*Plaintiff*

**MEMORANDUM OPINON AND ENTRY FO JUDGMENT**

NATURE OF THE CASE:

This is an action filed by the Plaintiff, Xiangyuan (Sue) Zhu, seeking a permanent injunction against Fisher, Cavanaugh, Smith & Lemon, P.A., a law firm, and one of its members, Thomas G. Lemon. The Defendants have filed a motion to dismissed for failure to state a claim and the Plaintiff has responded. No oral argument has been requested.

CONCLUSIONOF LAW:

The parties are familiar with the pleadings so the court will not repeat them here. A review of Plaintiff's pleadings demonstrates that Plaintiff basically claims that eh Defendants, as a law firm, and the Defendant, Thomas G. Lemon, as a member of the firm, has, by way of a written letter send under the date of May 12, 2000, in reference to a potential lawsuit between the Plaintiff here and one Marc Bunting, acted unprofessionally and without a basis in fact in representing their client, Mr. Bunting. Plaintiff in her reply to the Defendants' motion also makes similar allegations in regard to their representation of Mr. Bunting in a federal Housing and Urban Development agency complaint filed by Plaintiff with that agency. Except by reference to the May 12, 2000, letter to Plaintiff from the firm, all Plaintiff's allegations are general and/or are otherwise in reference to pleadings of record or fillings with the reference agency. The court has taken judicial notice of the letter in question and the federal agency pleadings which appear as exhibits in Case No. 00C579 filed in the Shawnee County District Court by Xiangyuan (Sue) Zhu as part of her amended motion to dismiss in that case.

An injunctive action, and any temporary remedy afforded under such a proceeding, is generally available when no other adequate remedy at law exists to prevent or stay the alleged conduct and must, at least by the pleadings, facially demonstrate that if injunctive relief it not granted, irreparable injury will occur. (Wichita Wire, Inc. v. Lennox, 11 Kan. App. 2d 459 (1986).

Here, the allegations are that the Defendant attorneys, acting as attorneys, should be enjoined from the representation of a client when they are merely acting in the ordinary course of the profession through recognized channels and methods of communication and the Plaintiff believes such conduct is inconsistent with her view of the merits of the case or cases underlying their representation.

These allegations and the records noticed, individually or collectively, fail to state a viable claim for injunctive relief. The conduct alleged by Plaintiff in so far as she claims that the attorneys are violating their oath of office or engaged in defamatory conduct is remediable, if true, by way of other clearly recognized legal remedies. Further, Plaintiff's pleadings, including her responses to the Defendants' motion to dismiss, reveal no conduct that can remotely be said to be remediable by injunctive relief. From the facts alleged there is no basis to believe Plaintiff could prevail on the merits, no showing of irreparable injury to her, no showing that any assumed injury to her overrides the potential injury to the rights of others to litigate claims in the ordinary course, and, in this light, the inherent public interest in permitting the unfettered litigation of underlying disputes in the ordinary course of legal proceedings.

## ENTRY OF JUDGMENT

Accordingly, judgment is hereby entered for the

Defendants, Fisher, Cavanaugh, Smith & Lemon, P.A., and Defendant, Thomas G. Lemon, dismissing Plaintiff's case for failure to state a claim. The costs of filing this action are taxed to the Plaintiff and the Plaintiff is further directed to appear September 6, 2000, at 1:30 p.m. to show cause why she should not be subject to an order requiring her to reimburse the Defendants for their legal costs in responding to her Petition. Defendants are directed to submit to Plaintiff an itemized claim for their expenses claimed incurred by August 18, 2000.

IT IS SO ORDERED, this 31st day of July, 2000.

/s/_____
Franklin R.Theis
Judge of the District Court
Division Seven

## APPENDIX H

**NO. 00C665**

**KANSAS DISTRICT COURT**
**DIVISION NO. SIX**

**[Dated July 13, 2000]**

| | |
|---|---|
| EX PART XIANGYUAN (SUE) ZHU, *Plaintiff* | ) |

## DECISION

Greeting:

The court has considered the motion of defendant Marc Bunting to consolidate all related actions [sic] NOS. 00C579, 00C665 & 00C714 and is persuaded the motion should be sustained. Under applicable local rules the cases are transferred to the division with the first filed matter, in this case Division VII. All hearing dates are canceled and new settings should be obtained from Division VII.

Very truly yours

/s/_____

Terry L. Bullock
District Judge

## APPENDIX I

**U.S. Department of Housing and Urban Development**
Kansas/Missouri State Office
Room 200
Gateway Tower II
400 State Avenue
Kansas City, KS 66101 –2406

**[Dated April 28, 2000]**

Xiangyuan (Sue) Zhu
2918 SW Gainsboro Road
Topeka, KS 66614

Dear Complainant

Subject: **Housing Discrimination Complaint**
Zhu v. Countrywide Realty, Inc., et al.
**HUD Case No. 07 –00 –0302 –8**

Your complaint, alleging one or more discriminatory housing practices, was officially filed on 04/28/00 as a complaint under the Federal Fair Housing Law, 42 U.S.C. Sections 3601-3619. For your records, we are enclosing a copy of your complaint, and, as required by law, a copy has been sent to the respondent (s).

The purpose of this letter s to inform you of: 1) the rights you have during the processing of this complaint, 2) the rights each respondent has in responding to this complaint, and 3) the steps the U.S. Department of Housing and Urban Development (the Department) will take to determine whether the complaint has merit.

In order to ensure that the Department informs you properly of the law's requirements, this notification letter contains language required by the law. A similar letter is used to notify all parties whenever a formal complaint has been filed with the Department under the Federal Fair Housing Law.

We are governed by federal law which sets out what steps we must take when a formal complaint is filed. The law also includes steps which each respondent can take to answer or refute the allegations of this complaint.

Under federal law, a respondent can file an answer to this complaint or any amendment made to this complaint within 10 calendar days of receipt of the signed and affirmed that the response is truthful by including the statement "I declare under penalty of perjury that I have read this compliant (including any attachments) and that it is true and correct." A respondent can, with the agreement of the Department, amend his or her answer at any time during the investigation.

Our responsibility under the law is to undertake

an impartial investigation and, at the same time, encourage all sides to reach an agreement, where appropriate, through conciliation. The law requires us to complete our investigation within 100 days for the date of the official filing of the complaint. If we are unable to meet the 100-day requirement for issuing a determination, the law requires that we notify you and the respondent (s) and explain the reasons why the investigation of the complaint is not completed.

In handling this complaint, we will conduct an impartial investigation of all Claims that the Fair Housing Act has been violated. If the investigation indicates that there is not evidence establishing jurisdiction, the case will be dismissed. At any point, you can request that our staff assist you in conciliating (or settling) this complaint with the respondent(s). If the case is not resolved, we will complete our investigation and decide whether or not the evide3nce indicates that there has been a fair housing violation. If the parties involved have not reached an agreement to settle the complaint, the Department will issue a determination as to where there is reasonable cause to believe a discriminatory housing practice has occurred.

If our investigation indicates that there is reasonable cause to believe that an unlawful discriminatory housing practice has occurred, the Department must issue a charge. If the investigation indicates there is no reasonable cause to believe that discrimination has occurred, the complaint will be dismissed. In either event, you will be notified in writing.

If the determination is one of reasonable cause, the notification will advise you and the respondent(s) of your rights to choose, within 20 days, whether you wish to have the case heard by an Administrative Law Judge, or to have the matter referred for trial in the appropriate U.S. District Court.

Under federal law, even if the Department dismisses the complaint, you still have the right to bring an individual suit under the Federal Fair Housing Law. You may file your lawsuit in an appropriate federal, state or local court within two years of the date of the alleged discriminatory practice or of the date when a conciliation agreement has been violated. The law does not count, as part of the two-year period, any of the time when a proceeding is pending with the Department. You also have the legal right to file a lawsuit in court, even if your complaint formed the basis for a charge, as long as an Administrative Law Judge has not started a hearing on the record with respect to the charge.

There may be other applicable federal, state or local statutes under which you and/or the respondent(s) may initiate court action. You may consult a private attorney in this regard.

The law also requires us to notify you that section 818 of the Fair Housing Act makes it unlawful for a respondent or anyone else to coerce, intimidate, threaten, or interfere with you in your exercise or enjoyment of, any right granted or protected under the Federal Fair Housing Law. The law makes it illegal for anyone to coerce in the exercise or enjoyment of, any right or

protection granted to them under the Federal Fair Housing Law.

Some explanatory material on the law is enclosed for your information.

If you have any questions regarding this case, please contact our office at (800) 743 –5323. Please refer to the case number at the top of this letter in those contacts, and keep this office advised of any change of your address or telephone number. We hope this information has been helpful to you.

Sincerely,

/s/_____

Robbie Herndon
Director
Kansas City Fair Housing Hub

Enclosures

**April 28, 2000**

**HOUSING DISCRIMINATION COMPLAINT**

**CASE NUMBER: 07 –00 –0302 –8**

**1. Complainants**

Xiangyuan (Sue) Zhu
2918 SW Gainsboro Road
Topeka, KS 66614

**2. Other Aggrived Persons**

Ye Zhu
2918 SW Gainsboro Road
Topeka, KS 66614

**3. The following is alleged to have occurred or is about to occur:**

Discriminatory terms, conditions, privileges, or services and facilities.
Discriminatory acts under Section 818 (coercion, Etc.).
Discriminatory acts under Section 901 (criminal).

**4. The alleged violation occurred because of:**

Race and sex.

**5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):**

2918 S.W. Gainsboro Road
Topeka, KS 66614

**6. Respondent(s)**

Countrywide Realty Company, Inc.
2030 SW McAlister Avenue
Topeka, KS 66604

Marc E. Bunting
Countrywide Realty Company, Inc.
2030 SW McAlister Avenue
Topeka, KS 66604

Robert Thomas
Countrywide Realty Company, Inc.
2030 SW McAlister Avenue
Topeka, KS 66604

Candace Thomas
Countrywide Realty Company, Inc.
2030 SW McAlister Avenue
Topeka, KS 66604

7. **The following is a brief and concise statement of the facts regarding the alleged violation:**

Section: 804 (b)
Issue: Terms and Conditions
Bases: National Origin (Chinese), Sex (Female)
Allegation: Breach of Real Estate Contract, Failing to Disclose and Correct Defects

The complainant alleges the respondents Marc E. Bunting and Countrywide Realty, Inc., discriminated against her failing to make the repairs necessary to correct all the defects in the subject property indicated on the repair requirement list. The complainant alleges that in July 1998, the respondents agreed to repair the items listed on the requirement list, but to date have failed to complete the repair of the defects.

Section: 818
Issue: Intimidation, Threatening, coercion
Bases: National Origin (Chinese), Sex (Female)
Allegation: Visiting Job, and Threatening Legal Action

The complainant alleges the respondent Marc E. Bunting and Countrywide Realty, Inc., discriminated against her by intimidating and threatening the complainant on numerous occasions in an attempt to get the complainant to stop requesting repairs of the subject property. The complainant alleges that after she requested repairs be made to the subject property, that the complainants refused to complete all the repairs, and on several occasions threatened to sue her, came to her place of employment and threatened her with legal action, and at one poi t placed a restraining order against the complainant to keep her from contacting the respondents to request repairs.

Section: 818
Issue: Intimidation, Threatening, coercion
Bases: National Origin (Chinese), Sex (Female)
Allegation: Interfering Job, and Threatening Legal Action

The complainant alleges the respondent, Robert Thomas, discriminated against her by threatening and intimidating her in the real estate office. The

complainant alleges that on or about July 1, 1999 she visited the Countrywide Realty's office in an attempt to file a complaint to get repairs completed on her house. The complainant alleges that the respondent, Robert Thomas approached her in a physically threatening manner and told the complainant to never come to the real estate office again, and further that he would sue her if she did. (He yelled at me if I did again, he would have police arrest me, and have my employer fired me. XZ initial).

Section: 818
Issue: Intimidation, Coercion, Interfering
Bases: National Origin (Chinese), Sex (Female)
Allegation: Interfering in Making of Complaint

The complainant alleges the respondent, Candace Thomas, (she did more than stated here. XZ initial), discriminated against her by interfering with the complainant filing a complaint against Marc E. Bunting. The complainant alleges that on or about July 1, 1999 she visited the Countrywide real estate office in an attempt to file a complaint to get repair completed on her house. The complainant alleges she requested to speak with Marc E. Bunting to file her complaint, and was falsely informed by Candice Thomas that Mr. Bunting was not present in the office. The complainant alleges that Candice Thomas intentionally attempt to coerce her not to file a complaint in an attempt to assist Marc Bunting in

his illegal and discriminatory acts against the complainant.

Section: 818
Issue: Sexual Harassment
Bases: National Origin (Chinese), Sex (Female)
Allegation: Exchanging Repairs for Sexual favors

The complainant alleges the respondent, Marc E. Bunting, discriminated against her by subjecting her to sexual harassment. The complainant alleges after purchasing the subject property, she requested the respondent to make repairs on her house. The complainant alleges that during the period on or about November 23, 1998 through on or about June 13 1999, that the respondent, Marc E. Bunting demanded and received sexual favors from the complainant in exchange for him making repairs on the complainant's house. The complainant alleges that the respondent would come to her house under the pretext of making repairs, and would demand that the complainant have sex with him before he made any repairs.

Section: 901
Issue: Bodily Injury
Bases: National Origin (Chinese), Sex (Female)
Allegation: Sexual Assault and Rape

The complainant alleges that respondent, Marc E. Bunting, discriminated against her by subjecting her to Sexual Assault and Rape. The complainant alleges that on or about June 30, 1999, the respondent, Marc E. Bunting, arrived at her house under pretext of making repairs to her house, and that the respondent demand sex before making the repairs. The complainant alleges that she refused the respondent's request for sexual favors and that the respondent, Marc E. Bunting then physically pushed her into a room and forcibly sexually assaulted and raped the complainant.

**8. The most recent date on which the alleged discrimination occurred:**

July 1, 1999, and is continuing.

**9. Types of Federal Funds identidfied:**

None.

**10. The acts alleged in this complaint, if proven, may constitutes a violation of the following:**

Sections 804b or f, 818 and 901 of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

/s/_____
Xiangyuan (Sue) Zhu
Dated: 05-08-2000

**NOTE: HUD WILL FURNISH A COPY OF THIS COPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.**

## APPENDIX J

## SUPREME COURT ORDER

## IN THE SUPREME COURT OF THE STATE OF KANSAS

## N0. 01-87144-AS

## [Dated April 30, 2002]

EX PART XIANGYUAN (SUE) ZHU,
*Appellant*

You are hereby notified of the following action taken by the court:

Petition for review by Xiangyuan (Sue) Zhu.

Considered by the court and denied.

Response and reply noticed.
Dated: 04/30/2002

Carol G. Green
Clerk